

**ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)**  
**Act 386 of 1998**

**PART 1**  
**GENERAL PROVISIONS**

**700.5101 General definitions.**

Sec. 5101. As used in parts 1 to 4 of this article:

(a) "Best interests of the minor" means the sum total of the following factors to be considered, evaluated, and determined by the court:

- (i) The love, affection, and other emotional ties existing between the parties involved and the child.
- (ii) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue educating and raising the child in the child's religion or creed, if any.
- (iii) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (iv) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (v) The permanence, as a family unit, of the existing or proposed custodial home.
- (vi) The moral fitness of the parties involved.
- (vii) The mental and physical health of the parties involved.
- (viii) The child's home, school, and community record.
- (ix) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.

(x) The party's willingness and ability to facilitate and encourage a close and continuing parent-child relationship between the child and his or her parent or parents.

(xi) Domestic violence regardless of whether the violence is directed against or witnessed by the child.

(xii) Any other factor considered by the court to be relevant to a particular dispute regarding termination of a guardianship, removal of a guardian, or parenting time.

(b) "Claim" includes, in respect to a protected individual, a liability of the protected individual, whether arising in contract, tort, or otherwise, and a liability of the estate that arises at or after the appointment of a conservator, including expenses of administration.

(c) "Conservator" includes, but is not limited to, a limited conservator described in section 5419(1).

(d) "Visitor" means an individual appointed in a guardianship or protective proceeding who is trained in law, nursing, or social work, is an officer, employee, or special appointee of the court, and has no personal interest in the proceeding.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

**Popular name:** EPIC

**700.5102 Payment or delivery.**

Sec. 5102. (1) A person under a duty to pay or deliver money or personal property to a minor may perform this duty by paying or delivering the money or property, in an aggregate value that does not exceed \$5,000.00 each year, to any of the following:

- (a) The minor if he or she is married.
- (b) An individual having the care and custody of the minor with whom the minor resides.
- (c) A guardian of the minor.
- (d) A financial institution incident to a deposit in a state or federally insured savings account in the sole name of the minor with notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery knows that a conservator has been appointed or a proceeding for appointment of a conservator of the minor's estate is pending.

(3) Other than the minor or a financial institution, an individual receiving money or property for a minor is obligated to apply the money to the minor's support and education, but shall not pay himself or herself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. An excess amount shall be preserved for the minor's future support and education. A balance not used for those purposes and property received for the minor shall be turned over to the minor when majority is attained. A person who pays or delivers money or property in accordance with this section is not responsible for the proper application of the money or property.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

#### **700.5103 Delegation of powers by parent or guardian.**

Sec. 5103. (1) By a properly executed power of attorney, a parent or guardian of a minor or a guardian of a legally incapacitated individual may delegate to another person, for a period not exceeding 6 months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward or to release of a minor ward for adoption.

(2) If a parent or guardian is serving in the armed forces of the United States and is deployed to a foreign nation, and if the power of attorney so provides, a delegation under this section is effective until the thirty-first day after the end of the deployment.

(3) If a guardian for a minor or legally incapacitated individual delegates any power under this section, the guardian shall notify the court within 7 days after execution of the power of attorney and provide the court the name, address, and telephone number of the attorney-in-fact.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 93, Imd. Eff. May 7, 2004.

Popular name: EPIC

#### **700.5104 Request or notice; interested person.**

Sec. 5104. (1) An interested person who desires to be notified before an order is made in a guardianship proceeding, including a proceeding subsequent to the appointment of a guardian under section 5312, or in a protective proceeding under section 5401 must file a request for notice with the register of the court in which the proceeding is pending and with the attorney of record of the guardian or conservator or, if none, with the guardian or conservator, if any. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or an attorney to whom notice is to be given. The request is effective only as to a proceeding that occurs after the filing. If a guardianship or protective proceeding is not pending at the time a person files a request for notice as authorized by this subsection, the person shall pay a fee for filing the request, which fee shall be in the same amount as, but is separate from, the fee required to commence such a proceeding.

(2) A governmental agency paying benefits to the individual to be protected or before whom an application for benefits is pending is an interested person in a protective proceeding.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

#### **700.5105 Kidney donation by minor.**

Sec. 5105. The court has jurisdiction of the matter described in this section. If authorized by order of the court that has jurisdiction of the prospective donor, a person 14 years of age or older may give 1 of his or her 2 kidneys to a father, mother, son, daughter, brother, or sister for a transplantation needed by the intended donee. A guardian, parent, spouse, child, or other next of kin of the prospective donor, other than the intended donee, may file a petition for an order under this section. If the prospective donor does not have a guardian, the court shall appoint a guardian ad litem to protect the prospective donor's interests. The court shall hold a hearing on the petition and cause notice of the hearing to be given. The prospective donor shall be present at the hearing and shall be examined by the petitioner or the court, or both. If the court determines that the prospective donor is sufficiently sound of mind to understand the needs and probable consequences of the gift to both the donor and donee and agrees to the gift, the court may enter an order authorizing the making of the gift.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

#### **700.5106 Appointment or approval of professional guardian or professional conservator as guardian or conservator; appointment of nonbanking corporation to act as fiduciary in state.**

Sec. 5106. (1) Subject to the other provisions of this section, the court may appoint or approve a professional guardian or professional conservator, as appropriate, as a guardian or conservator under this act, or as a plenary guardian or partial guardian as those terms are defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(2) The court shall only appoint a professional guardian or professional conservator as authorized under subsection (1) if the court finds on the record all of the following:

(a) The appointment of the professional guardian or professional conservator is in the ward's, developmentally disabled individual's, incapacitated individual's, or protected individual's best interests.

(b) There is no other person that is competent, suitable, and willing to serve in that fiduciary capacity in accordance with section 5212, 5313, or 5409.

(3) The court shall not appoint a professional guardian or professional conservator as authorized under subsection (1) unless the professional guardian or professional conservator files a bond in an amount and with the conditions as determined by the court. For a professional conservator, the sureties and liabilities of the bond shall be as provided in sections 5410 and 5411.

(4) A professional guardian or professional conservator appointed under this section shall not receive as a result of that appointment a benefit beyond compensation specifically authorized for that type of fiduciary by this act or the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(5) A professional guardian appointed under this section shall establish and maintain a schedule of visitation so that an individual associated with the professional guardian who is responsible for the ward's care visits the ward within 3 months after the professional guardian's appointment and not less than once within 3 months after each previous visit.

(6) A professional guardian appointed under this section shall ensure that there are a sufficient number of employees assigned to the care of wards for the purpose of performing the necessary duties associated with ensuring that proper and appropriate care is provided.

(7) For the purposes of the statutory authorization required by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL 487.11105, to act as a fiduciary in this state, if the court appoints a for-profit or nonprofit, nonbanking corporation organized under the laws of this state to serve in a fiduciary capacity that is listed in subsection (1), the nonbanking corporation is authorized to act in that fiduciary capacity. The authorization under this subsection confers the fiduciary capacity only to the extent necessary in the particular matter of each appointment and is not a general grant of fiduciary authority. A nonbanking corporation is not authorized to act in any other fiduciary capacity.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001.

**Popular name:** EPIC

#### **700.5107 Entry into or removal from LEIN.**

Sec. 5107. (1) Upon entry of an order finding that an individual is legally incapacitated, the court shall immediately order the department of state police to enter the order into the law enforcement information network.

(2) Upon entry of an order finding that an individual is no longer legally incapacitated, the court shall immediately order the department of state police to remove from the law enforcement information network the court order entered into the law enforcement information network under subsection (1) that found that the individual was legally incapacitated.

(3) The department of state police shall immediately enter an order into the law enforcement information network or shall immediately remove an order from the law enforcement information network as ordered by the court under this section.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.5108 Appointment of guardian ad litem; preference prohibited.**

Sec. 5108. The person that commences an action or procedure under this article, or that makes a motion for, or in another manner requests, the appointment of a guardian ad litem under this article, shall not choose or indicate in any manner the person's preference as to a particular person for appointment as guardian ad litem.

**History:** Add. 2000, Act 465, Eff. June 1, 2001.

**Popular name:** EPIC

#### **700.5109 Release from liability for injury of minor during recreational activity.**

Sec. 5109. (1) Before a minor participates in recreational activity, a parent or guardian of the minor may release a person from liability for economic or noneconomic damages for personal injury sustained by the minor during the specific recreational activity for which the release is provided.

(2) This section only applies to a recreational activity sponsored or organized by a nongovernmental, nonprofit organization.

(3) Either or both of the following may be released from liability under this section:

(a) The sponsor or organizer of the recreational activity.

(b) An individual who is paid or volunteers to coach or assists in conducting the recreational activity.

(4) A release under this section only releases the sponsor, organizer, owner, lessee, or other person released

from liability for injury or death that results solely from the inherent risks of the recreational activity. A release under this section does not limit the liability of the sponsor, organizer, owner, lessee, or other person released for the sponsor's, organizer's, owner's, lessee's, or other person's own negligence or the negligence of its employees or agents that causes or contributes to the injury or death.

(5) A release under this section must be in writing.

(6) This section does not restrict the limitation of liability afforded by section 73301 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.73301, or 1964 PA 170, MCL 691.1401 to 691.1419.

(7) As used in this section:

(a) "Camping activity" means a recreation activity planned and carried out by the owner and operator of a camp.

(b) "Recreational activity" means active participation in an athletic or recreational sport or in a camping activity.

**History:** Add. 2011, Act 61, Imd. Eff. June 21, 2011;—Am. 2016, Act 187, Eff. Sept. 19, 2016.

**Popular name:** EPIC